IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Maharaj Kumar Chand and another v. Punjab National Bank and another

S.B.CIVIL WRIT PETITION NO.1167/2005
under Articles 226 and 227 of the Constitution of India.

Date of Order : 11th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Akshay Parakh, for the petitioners.
Mr. Jagdish Vyas, for the respondents.

BY THE COURT :

By this petition for writ a challenge is given by the petitioner to the order dated 29.10.2004 passed by Additional District Judge (Fast Track) No.2, Jodhpur in Civil Suit No.201/04, Punjab National Bank v. Suresh Bhandari. The trial court by the order dated 29.10.2004 dismissed five applications preferred by the petitioner defendant.

The petitioner preferred an application under Order 14 Rule 5 CPC with a request to frame additional issues. An another application dated 17.5.2004 was

filed by the petitioner under Order 19 Rule 1 CPC to permit defendants to submit their evidence which was closed by order dated 17.5.2004. The third application under Order 19 Rule 17 read with Section 151 CPC was submitted by the petitioner to make an order to recall plaintiff witnesses for recross examination. The fourth application filed by the petitioner under Order 8 Rule 9 CPC with a prayer to allow defendants to file additional written statement. The fifth application preferred by the petitioner pertains to permit him to sale property mortgaged with plaintiff bank.

The trial court rejected all the applications referred above by giving sufficient reasons. The trial court while rejecting the applications also observed that the suit is at the final stage of its disposal and the applications appear to be filed with a view to prolong the proceedings. It also appears from the record that the evidence of the plaintiff was completed on 17.9.2003 and the evidence of the defendants was closed on 10.11.2003. No challenge was ever given by the petitioner to the order passed by the trial court closing the defendants evidence.

Looking to all the facts and circumstances of the case I do not find any reason to interfere with the order passed by the trial court while exercising powers under Article 227 of the Constitution of India. It is well settled that the powers under Article 227

of the Constitution of India can be exercised only if a court subordinate acts with erroneous assumption or beyond jurisdiction vested with it or refused to exercise jurisdiction vested with it or exercised its powers, authority or discretion capriciously and arbitrarily or committed a patent error in procedure and there is a perverse finding which is based on no evidence resulting in manifest injustice. The powers under Article 227 of the Constitution of India are not available to be exercised to correct mere errors whether on the facts or laws.

In totality of facts of the case I do not find the present case where powers under Article 227 of the Constitution of India are required to be exercised.

In result, the writ petition stands dismissed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.